

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

11 GPNE CORP., ) Case No.: 12-CV-02885-LHK  
12 v. Plaintiff, )  
13 ) PRETRIAL CONFERENCE ORDER  
14 APPLE, INC., )  
15 Defendant. )

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16 Plaintiff's Counsel: Barry Bumgardner; Howard Susser; Patricia Peden; Steven Hartsell  
17 Defendant's Counsel: Ruffin Cordell; Kathy Lutton; Christopher Green; Joseph Mueller; Mark  
Selwyn

18 The Court held a Pretrial Conference in this case on June 26, 2014. A further status  
19 conference is set for September 24, 2014 at 2 p.m.

20 Having considered the briefing and oral arguments presented at the Pretrial Conference and  
21 having balanced the appropriate factors under Federal Rule of Evidence 403, the Court rules as  
follows on the pending Motions in Limine<sup>1</sup> for the reasons stated on the record:

- 22 • **Apple Motion in Limine No. 1 to Preclude GPNE from Offering Evidence or**  
23 **Argument Relating to Successful Outcome of Reexamination Proceedings:**  
DENIED.
- 24 • **Apple Motion in Limine No. 3 to Preclude GPNE from Offering Evidence or**  
25 **Argument Concerning Infringement Under the Doctrine of Equivalents:**  
GRANTED IN PART AND DENIED IN PART. Based on GPNE's statements at the  
June 26, 2014 hearing, Dr. Dinan has not offered an opinion regarding infringement  
under the doctrine of equivalents as to the accused LTE devices. Accordingly, Apple's  
motion is GRANTED to the extent that Dr. Dinan may not offer testimony at trial

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26 <sup>1</sup> The Court has already ruled on the other Motions in Limine. See ECF No. 319.

regarding the doctrine of equivalents as to the accused LTE devices. Apple's motion is otherwise DENIED. Apple has not demonstrated that vitiation applies here.

- **Apple Motion in Limine No. 5 to Preclude GPNE from Offering Evidence or Argument Concerning Apple’s Total Revenues or Profits from Accused or Non-Accused Products:** The parties shall file a stipulation by July 10, 2014 that indicates what portion of this motion in limine remains in dispute. The parties shall also address what portion of the pending *Daubert* motion regarding Mr. Dansky’s opinions relating to the convoyed sales issue remains in dispute. The Court will issue a separate order on the *Daubert* motion and will issue an order on Apple’s Motion in Limine No. 5 as needed.
  - **GPNE Motion in Limine No. 4 to Exclude Testimony Related to the Agilent SIM Card:** GRANTED. Dr. Wilson’s testimony as to the Agilent SIM card is not relevant to whether Dr. Dinan’s test proves that Apple’s accused devices infringe the Patents-in-Suit because the Agilent SIM card does not alter the functionality claimed by the Patents-in-Suit. As the Court stated in its summary judgment order, “under Apple’s logic, no device sold by Apple is even capable of operating on a telephone network.” ECF No. 239, Order Granting in Part and Denying in Part Motion for Summary Judgment, at 14. Dr. Wilson’s testimony as to the Agilent SIM card is therefore irrelevant and substantially risks confusing the jury.

In addition, the Court made the following rulings on the record at the Pretrial Conference:

- **Supplemental Expert Reports on Indefiniteness:** The Court allowed the parties to engage in supplemental expert reports on indefiniteness in light of the Supreme Court's decision in *Nautilus, Inc. v. Biosig Instruments, Inc.*, 134 S. Ct. 2120 (2014). Any indefiniteness issues will be decided by the Court, and not tried to the jury. The Court set a twelve-page limit for expert reports. The deadlines for supplemental expert discovery are as follows:
    - Apple's Supplemental Opening Report: July 25, 2014
    - GPNE's Supplemental Rebuttal Report: August 29, 2014
    - Close of Supplemental Expert Discovery: September 12, 2014
  - **Jury Selection:**
    - The Court will seat eight jurors. The Court will conduct voir dire. The Court will permit 15 minutes of attorney voir dire per side. The Court does not permit jury questionnaires.
    - The parties shall file by October 2, 2014 a joint list of witnesses, deponents, attorneys, law firms, and trial dates and times to be used during jury selection. The parties shall bring 40 copies of this list on October 6, 2014.
  - **Time Limits:** The trial time limits remain as previously set. The parties shall have 40 minutes per side for opening statements, 15 hours per side for evidence, and 1 hour per side for closing arguments.
  - **High Priority Objections:**
    - The parties shall file objections to witnesses, exhibits, and demonstratives by no later than 8 a.m. the day before the witness is to testify or the exhibit or

- 1 demonstrative is to be used. Responses shall be filed at the same time. The  
2 parties shall stipulate to a timeline for exchange of these materials and for a  
3 meet and confer prior to the filing. Objections and responses shall total no more  
4 than 5 pages per side per day. The parties may object to three exhibits per  
5 witness, and may raise two objections per exhibit. The parties may raise three  
6 objections to the deposition testimony of a witness. Any other objections shall  
7 be made during trial. The responding party shall format the response pursuant to  
8 the objecting party's formatting. Any requests to seal exhibits shall be included  
9 in one additional page in the objections and responses themselves.
- 10     ○ The parties shall file their objections and responses to opening statement  
11 demonstrators by Thursday, October 2, 2014, at 1 p.m. The parties shall  
12 provide a joint proposal regarding the maximum number of slides to be  
13 exchanged for opening statements and closing arguments by September 19,  
14 2014.
- 15     ● **Exhibit Lists:** The parties shall meet and confer to develop a joint exhibit list. The  
16 parties shall file the joint exhibit list, and revised versions of their separate exhibit lists  
17 that omit the exhibits that were moved to the joint exhibit list, by September 17, 2014.
- 18     ● **Deposition Designations:** The parties shall file deposition designations by August 22,  
19 2014. The parties shall file objections and counter-designations by September 5, 2014.
- 20     ● **Jury Notebooks:** The parties shall prepare joint stipulated jury notebooks and bring  
21 twelve copies (eight for the jurors and four for the Court) on Friday, October 3, 2014.  
22 The parties must stipulate to everything in the jury notebooks. If no agreement can be  
23 reached, the item or information is not permitted in the jury notebooks. The jury  
24 notebooks are to include:  
25         ○ Lists of witnesses, attorneys, and trial dates and times  
         ○ Sample patent to accompany the Federal Judicial Center patent video  
         ○ Preliminary Jury Instructions  
         ○ Two-columned chart of the asserted claims: The left column shall contain the  
             asserted claims with the construed terms highlighted. The right column shall  
             contain the Court's claim construction of the highlighted terms.  
         ○ Glossary  
         ○ All asserted patents  
         ○ Tab for witness photos. The parties shall take a photo of each witness outside  
             the Courtroom immediately before the witness testifies and shall provide the  
             Courtroom Deputy 12 three-hole punched 8 1/2 x 11 copies of each photo. The  
             Courtroom Deputy will distribute the photos. The witness must appear the same  
             in the photo as he/she will appear on the witness stand (e.g., same clothing,  
             hairstyle, eyewear).  
         ○ Tab for Final Jury Instructions  
         ○ Blank lined paper
- 26     ● **FJC Video:** The parties agreed that the jury would view the latest version of the FJC  
27 video. The parties are responsible for providing and playing the FJC video on October  
28 6, 2014.
- 29     ● **Final Jury Instructions:** The parties shall file joint revised final jury instructions by  
30 July 15, 2014.

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- **Trial Schedule:** The trial schedule will be 9:00 a.m. to 4:30 p.m., with a lunch break from 12:00 p.m. to 1:00 p.m., on Monday, Tuesday, and Friday. The trial will take place in Courtroom Eight on the fourth floor of the San Jose Courthouse. The seven-day jury trial remains as scheduled for October 6, 2014; October 7, 2014; October 10, 2014; October 14, 2014; October 17, 2014; October 20, 2014; and October 21, 2014.

5 **IT IS SO ORDERED.**

6 Dated: July 6, 2014

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11 LUCY H. KOH

12 United States District Judge

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